

James R. Condo (#005867)  
Amanda C. Sheridan (#027360)  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren, Suite 1900  
Phoenix, AZ 85004-2204  
Telephone: (602) 382-6000  
jcondo@swlaw.com  
asheridan@swlaw.com

Richard B. North, Jr. (admitted *pro hac vice*)  
Georgia Bar No. 545599  
Matthew B. Lerner (admitted *pro hac vice*)  
Georgia Bar No. 446986  
NELSON MULLINS RILEY & SCARBOROUGH LLP  
Atlantic Station  
201 17th Street, NW, Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
richard.north@nelsonmullins.com  
matthew.lerner@nelsonmullins.com

*Attorneys for Defendants*  
*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability  
Litigation

No. 2:15-MD-02641-DGC

**MOTION FOR LEAVE TO EXCEED  
PAGE LIMIT FOR BRIEFING  
RELATED TO DEFENDANTS'  
MOTION FOR SUMMARY  
JUDGMENT REGARDING  
PREEMPTION**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively "Bard") hereby move for leave to exceed the page limits defined in Local Rule of Civil Procedure 7.2(e) for the memorandum by the moving party (Bard), the Plaintiffs' responsive memorandum, and the moving party's reply memorandum in support of Defendants' motion for summary judgment regarding preemption. Bard requests 30 pages for both parties to brief the issues and 17 pages for Bard's reply, and in support of its motion states as follows:

1           1.       On February 17, 2017, the Court entered Case Management Order No. 22  
2 (Doc. 5007), ordering Bard to file a motion for summary judgment arguing that Plaintiffs'  
3 claims are preempted.

4           2.       Bard contends that its motion for summary judgment regarding preemption  
5 addresses a complex issue of federal law. Preemption under § 360k(a) of the Medical  
6 Device Amendments of 1976, which amended the Food, Drug, and Cosmetic Act FDCA,  
7 has been addressed by the United States Supreme Court on numerous occasions. The  
8 Supreme Court opinions demand a careful comparison of the federal regulatory activity at  
9 issue in this case.

10          3.       Plaintiffs' claims arise from their treatment with seven of Bard's retrievable  
11 IVC Filters. The federal regulatory activity for these seven devices is complex, highly  
12 detailed, and spans a fifteen year period. Bard contends that there is an extensive factual  
13 record of evidence, which Bard intends to lay out in support of its motion for summary  
14 judgment regarding preemption. Both parties will need to address the existing evidence of  
15 regulatory activity for the Court's resolution of this motion for summary judgment.

16          4.       The statutory and regulatory framework of the § 510k review process has  
17 also evolved significantly since the time the Supreme Court analyzed that process. The  
18 parties dispute the significance of these statutory and regulatory changes but both parties  
19 will need to address this issue for the Court's resolution of this motion for summary  
20 judgment.

21          5.       Bard does not believe that these issues can sufficiently be addressed in the  
22 seventeen pages allotted to each party in Local Civil Rule 7(e)(1), nor in the eleven pages  
23 allotted for reply in Local Civil Rule 7(e)(2).

24          6.       Bard's request is consistent with the joint request the parties made for  
25 briefing related to the Lehmann Report (Doc. 290). The Court granted the joint request  
26 (Doc. 294) allowing Bard 30 pages for its supporting memorandum, the Plaintiffs 30  
27 pages for their response memorandum, and 17 pages for Bard's reply. Bard contends that  
28 its motion for summary judgment regarding preemption has a far greater potential impact

1 on this MDL than the Lehmann Report issue, and warrants at least similar treatment as to  
 2 page limitations.

3 7. Counsel for Bard contacted counsel for the Plaintiffs seeking their consent  
 4 for a joint motion to exceed the page limits consistent with the parties' prior joint requests  
 5 related to the Lehmann Report, considering the potential significance of this motion for  
 6 summary judgment on the MDL. Counsel for the Plaintiffs offered to stipulate to a five-  
 7 page extension to 22 pages for Bard's supporting memorandum.

8 WHEREFORE, Bard seeks leave of Court to exceed the page limits, and requests  
 9 that the Court allow Bard 30 pages for its initial supporting memorandum, the Plaintiffs  
 10 30 pages for their responsive memorandum, and Bard 17 pages for its reply memorandum.

11 RESPECTFULLY SUBMITTED this 15th day of March, 2017.

12 s/Richard B. North, Jr.  
 13 Richard B. North, Jr.  
 Georgia Bar No. 545599  
 Matthew B. Lerner  
 Georgia Bar No. 446986  
 NELSON MULLINS RILEY & SCARBOROUGH, LLP  
 Atlantic Station  
 201 17th Street, NW / Suite 1700  
 Atlanta, GA 30363  
 PH: (404) 322-6000  
 FX: (404) 322-6050  
 richard.north@nelsonmullins.com  
 matthew.lerner@nelsonmullins.com

19 James R. Condo (#005867)  
 20 Amanda Sheridan (#005867)  
 SNELL & WILMER L.L.P.  
 One Arizona Center  
 400 E. Van Buren  
 Phoenix, AZ 85004-2204  
 PH: (602) 382-6000  
 jcondo@swlaw.com  
 asheridan@swlaw.com

24 **Attorney for Defendants C. R. Bard, Inc. and**  
 25 **Bard Peripheral Vascular, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of March 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.  
Richard B. North, Jr.

**Nelson Mullins Riley & Scarborough**

L.L.P.  
201 17<sup>th</sup> Street NW, Suite 1700  
Atlanta, GA 30363  
(404) 322-6000